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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MAGDALINA KALINCHEVA M.D.,

12 Plaintiff,

13 vs.

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15 JESSE NEUBARTH,

16 Defendant.
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CASE NO. 13-CV-384-MMA(BLM)

ORDER

(1) DENYING MOTION TO FOR
LEAVE TO PROCEED *IN FORMA*
PAUPERIS; and

(2) *SUA SPONTE* DISMISSING
CASE

[Doc. No. 3]

18 Plaintiff Magdalina Kalincheva, proceeding *pro se*, moves the Court for leave to proceed *in*
19 *forma pauperis* pursuant to 28 U.S.C. § 1915. For the reasons stated below, the Court *sua sponte*
20 dismisses Plaintiffs' Complaint and grants Plaintiffs leave to amend.

21 Plaintiff has submitted an *in forma pauperis* application that makes the showing required
22 by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in
23 forma pauperis status does not complete the inquiry required by the statute. "A district court may
24 deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
25 complaint that the action is frivolous or without merit." *Minetti v. Port of Seattle*, 152 F.3d 1113,
26 1115 (9th Cir. 1998) (quoting *Tripati v. First Nat. Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir.
27 1987)); *see also Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the District
28 Court to examine any application for leave to proceed in forma pauperis to determine whether the

1 proposed proceeding has merit and if it appears that the proceeding is without merit, the court is
2 bound to deny a motion seeking leave to proceed in forma pauperis.”). Moreover, the Court must
3 dismiss an *in forma pauperis* case at any time if the allegation of poverty is found to be untrue or if
4 it is determined that the action is frivolous or malicious, fails to state a claim on which relief may
5 be granted, or seeks monetary relief against an immune defendant. *See* 28 U.S.C. § 1915(e)(2). A
6 complaint is legally frivolous when it lacks an arguable basis in law or in fact. *Neitzke v.*
7 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).
8 Under this standard, a court must dismiss a complaint as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
10 490 U.S. at 327; *see also* 28 U.S.C. § 1915(e).

11 Federal Rule of Civil Procedure 8(a) provides: “A pleading that states a claim for relief
12 must contain . . . a short and plain statement of the claim showing that the pleader is entitled to
13 relief.” Although Rule 8 “does not require ‘detailed factual allegations,’ . . . it [does] demand[]
14 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556
15 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other
16 words, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires
17 more than labels and conclusions, and a formulaic recitation of the elements of a cause of action
18 will not do.” *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
19 Generally, courts must broadly construe pleadings filed by *pro se* litigants, affording *pro se*
20 plaintiffs any benefit of the doubt. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Thompson v.*
21 *Davis*, 295 F.3d 890, 895 (9th Cir. 2002). However, even when receiving liberal construction, *pro*
22 *se* litigants must still comply with the Federal Rules of Civil Procedure, including Rule 8. *See*
23 *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

24 The Court finds the Complaint does not sufficiently show how Plaintiff is entitled to relief
25 in federal court. As an illustration of the type of rambling and incoherent text contained in the
26 Complaint, the first page of her Complaint reads as follows:

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1 rules of civil procedure. *See Amsterdam v. Office of Hawaiian Affairs*, 2011 U.S. Dist. LEXIS
2 91639 at *8-9 (D. Haw., Aug. 16, 2011) (citing *Franklin v. Murphy*, 745 F.2d 1221, 1227 n.6 (9th
3 Cir. 1984)) (explaining that a paid complaint that is “obviously frivolous” may be dismissed *sua*
4 *sponte* for numerous grounds, including Rule 12(b)(6), Rule 12(b)(1), and Rule 8 itself); *Nasious*
5 *v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1162 (10th Cir. 2007) (stating that dismissing a
6 case under Rule 41(b) for failure to comply with Rule 8 allows the plaintiff “another go at
7 trimming the verbiage; accordingly, a district court may, without abusing its discretion, enter such
8 an order without attention to any particular proceedings.”).

9 Accordingly, this action is **DISMISSED without prejudice**. Through this Order of
10 dismissal, Plaintiffs have notice of the Complaint’s deficiencies and an opportunity to respond by
11 filing an Amended Complaint. If Plaintiff wish, she may file an Amended Complaint that adheres
12 to the pleading requirements of Rule 8 **no later than April 1, 2013**. Any such Amended
13 Complaint must set forth a clear statement of Plaintiff’s claims in order to give Defendant a fair
14 opportunity to respond and to allow the Court to perform its responsibilities in managing this
15 action. The Court further directs Plaintiff to the Report and Recommendation issued in her
16 previous case in the Eastern District of California for additional guidance. *Kalincheva v.*
17 *Neubarth*, 2012 U.S. Dist. LEXIS 154334 (E.D. Cal. Oct. 25, 2012)

18 **IT IS SO ORDERED.**

19 DATED: February 21, 2013



Hon. Michael M. Anello
United States District Judge